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**UTILITY
PATENT APPLICATION
TRANSMITTAL**

(Only for new nonprovisional applications under 37 CFR 1.53(b))

ADDRESS TO: Assistant Commissioner for Patents
Box Patent Application
Washington, DC 20231

Attorney Docket No. **EVS-P-99-017**

First Named Inventor or Application Identifier

PAUL A. SMITH

Express Mail Label No: **EL449686280 US**

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APPLICATION ELEMENTS

See MPEP chapter 600 concerning utility patent application contents.

1. Specification Total Pages 16

2. Drawing(s) (35USC 113) Total Pages 01

3. Declaration and Power of Attorney Total Pages 02

a. Newly executed(FAXED COPY)

b. Copy from prior application (37CFR 1.63(d))
(for continuation/divisional with Box 14 completed)
[Note Box 4 Below]

i. DELETION OF INVENTOR(S)
Signed statement attached deleting Inventor(s) named in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b).

4. Incorporation By Reference (usable if Box 3b is checked)
The entire disclosure of the prior application, from which a copy of the oath or declaration is supplied under Box 3b, is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.

ACCOMPANYING APPLICATION PARTS

5. Assignment Papers (cover sheet & documentation) including check for \$40.00 recordation fee

6. Letter under 37 CFR 1.41(c).

7. English Translation Document (if applicable)

8. Information Disclosure Statement (IDS)/PTO-1449 Copies of IDS Citations

9. Preliminary Amendment

10. Return Receipt Postcard (MPEP 503)
(Should be specifically itemized)

11. Small Entity Statement filed in prior application, Statement(s) Status still proper and desired

12. Certified Copy of Priority Document(s)

13. Other:

14. If a CONTINUING APPLICATION, check appropriate box and supply the requisite information:

Continuation Divisional Continuation-in-part (CIP) of prior application No: _____

CLAIMS AS FILED

	(1) FOR	(2) NUMBER FILED	(3) NUMBER EXTRA	(4) RATE	(5) BASIC FEE \$345.00
TOTAL CLAIMS	20	20	0	9.00	
INDEPENDENT CLAIMS	03	04	1	39.00	39.00
ANY MULTIPLE DEPENDENT CLAIMS?			260.00		
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			TOTAL FILING FEE ->		\$384.00

The Commissioner is hereby authorized to charge any additional fees which may be required in connection with this application, or credit any overpayment to DEPOSIT ACCOUNT NO. 50-0595. A duplicate copy of this sheet is enclosed.

A check in the amount of \$ 384.00 to cover the filing fee is enclosed.

**15. CORRESPONDENCE ADDRESS
PATENTS+TMS**

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1914 North Milwaukee Avenue
Chicago, Illinois 60647
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SIGNATURE:

Brian M. Mattson (Reg. No. 5,010,18)

DATE: February 22, 2000

Applicant(s) or Patentee(s) Paul A. SmithAttorney's
Docket No.: EVS-P-99-017

Serial or Patent No. _____

Filed or Issued: _____

For: "A MARKING DEVICE, A METHOD OF USING THE SAME AND AN ACCESSORY KIT FOR THE MARKING DEVICE"**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS**
(37 CFR 1.9(f) & 1.27(c) - SMALL BUSINESS CONCERN)

I hereby declare that I am

the owner of the small business concern identified below:
 an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF CONCERN Eversharp Pen Company
 ADDRESS OF CONCERN 9240 West Belmont, Franklin Park, IL 60131

I hereby declare that the above-identified small business concern qualifies as a small business concern as defined in 13 CFR 121.12, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under section 41(s) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention "A MARKING DEVICE, A METHOD OF USING THE SAME AND AN ACCESSORY KIT FOR THE MARKING DEVICE" by Inventor Paul A. Smith

the specification filed herewith
 application Serial No. _____, filed _____
 Patent No. _____, issued _____

If the rights held by the above-identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below and no rights to the invention are held by any person, other than the inventor, who would not qualify as an independent inventor under 37 CFR 1.9(e) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e). NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averting to their status as small entities. (37 CFR 1.27).

NAME
ADDRESS

INDIVIDUAL SMALL BUSINESS CONCERN NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date and which status as a small entity is no longer appropriate. (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING Paul A. SmithTITLE OF PERSON OTHER THAN OWNER PresidentADDRESS OF PERSON SIGNING Eversharp Pen Company, 9240 W. Belmont, Franklin Park, IL 60131SIGNATURE Paul A. Smith DATE 2/22/2000

S P E C I F I C A T I O N

TITLE

"A MARKING DEVICE, A METHOD OF USING THE SAME AND AN
ACCESSORY KIT FOR THE MARKING DEVICE"

BACKGROUND OF THE INVENTION

It is, of course, generally known to provide a marking device, such as, for example, a pen, a pencil or other like marking device. Further, it is known to design marking devices so that the devices are comfortable to hold. Of course, many writing instruments are difficult and/or uncomfortable to hold and, during use of the same, users often experience the development of calluses or like friction points on the hands or fingers of the users, particularly those fingers which grip the writing instrument. Further, often handicaps or other difficulties arise with certain individuals making it difficult or uncomfortable to hold or grip a writing instrument.

It is also generally known to provide a marking device in, for example, a public area, such as a school, an office, a hospital, a retail store or the like, that

5 may be chained or otherwise connected to a permanent structure such as, for example, a desk or a wall. Many such marking devices are configured to have the chain or connecting device integrally formed and extending from the marking device through an end of the marking device.

10 To remove the marking device from the chain, a link may be removed from the chain thereby separating the marking device and a certain length of chain from the remainder of the chain that is attached to the permanent structure. This may make it difficult to replace the marking device to the connecting device when the marking device no longer functions or otherwise is depleted of writing material such as, for example, ink.

Moreover, marking devices used in, for example, the
15 aforementioned public areas are susceptible to contact
with bacteria, viruses and/or other microbes on the
surface of the marking device. Subsequent contact with
the marking device by other individuals in a public area
may increase the likelihood of exposure to the bacteria,
20 viruses and/or the microbes thereby likely causing
illness or disease to spread.

A need, therefore, exists for an improved marking device, a method of using the same and an accessory kit for a marking device that overcome the problems associated with known marking devices.

SUMMARY OF THE INVENTION

The present invention provides a marking device, a method of using the same and an accessory kit for a marking device. More specifically, the present invention provides a marking device, a method of using the same and an accessory kit for a marking device that provide an antibacterial sheath that fits over a barrel of the marking device and an end cap having a connecting chain

attached thereto.

To this end, in an embodiment of the present invention, a marking device is provided. The marking device has a barrel and a sheath that fits over the barrel. An end cap is provided for fitting on an end of the barrel wherein the end cap has a connecting lead.

5 In an embodiment, the sheath is cylindrically shaped with an aperture therethrough.

10 In an embodiment, the sheath wraps around the barrel of the marking device.

In an embodiment, a clamp is provided for clamping the sheath to the marking device.

15 In an embodiment, an antibacterial substance is associated with the sheath.

In an embodiment, the connecting lead is a chain.

In an embodiment, the end cap is interchangeable between a plurality of barrels.

20 In an embodiment, means is provided for attaching the sheath to the barrel.

In another embodiment of the present invention, an marking device accessory kit is provided. The accessory kit includes a marking device having a barrel and a flat article wherein the article wraps around the barrel of the marking device.

25 In an embodiment, a clamp clamps the article to the marking device.

In an embodiment, an antimicrobial substance is associated with the article.

30 In an embodiment, the article wraps a plurality of times around the barrel creating a plurality of layers around the marking device.

In an embodiment, the article includes an adhesive for fixing the article to the barrel of the marking

device.

In an embodiment, a tool is provided for attaching the clamps to the article.

5 In another embodiment of the present invention, a marking device accessory kit is provided. The kit includes a marking device having an end and an end cap fitting on the end of the marking device wherein the end cap is interchangeable between a plurality of marking devices. A connecting lead is connected to the end cap.

10 In an embodiment, the connecting lead is a chain.

In another embodiment, a method of using a marking device is provided. The method comprises the steps of: providing a barrel having an end; providing a sheath that fits over the barrel; providing an end cap for fitting over an end of the barrel wherein the end cap has a connecting lead; fitting the sheath over the barrel; and fitting the end cap over the end of the barrel.

In an embodiment, an antimicrobial substance is provided on the sheath.

20 In an embodiment, clamps are provided for clamping the sheath to the barrel of the marking device. The sheath is wrapped over the barrel of the marking device clamped to the barrel of the marking device.

25 In an embodiment, an adhesive on the sheath. The sheath is wrapped around the barrel of the marking device to form layers wherein the layers stick together and further to the marking device via the adhesive.

It is, therefore, an advantage of the present invention to provide a marking device, a method of using the same and an accessory kit for a marking device that provide a sheath that fits over a barrel of the marking device.

Another advantage of the present invention is to

provide a marking device, a method of using the same and an accessory kit for a marking device having an end cap for fitting on the end of the marking device wherein the end cap has a connecting lead.

5 Yet another advantage of the present invention is to provide a marking device, a method of using the same and an accessory kit for a marking device having an antibacterial substance associated therewith.

10 Moreover, an advantage of the present invention is to provide a marking device, a method of using the same and an accessory kit for a marking device that have clamps to hold the sheath to the marking device.

15 A still further advantage of the present invention is to provide a marking device, a method of using the same and an accessory kit for a marking device having an interchangeable end cap connected to the connecting lead.

20 And, another advantage of the present invention is to provide a marking device, a method of using the same and an accessory kit for a marking device that provide a tool to aid in clamping the sheath to the marking device.

25 A further advantage of the present invention is to provide a marking device, a method of using the same and an accessory kit for a marking device that provide a barrel of the marking device with a sheath wrapped therearound and further having an adhesive material to hold the sheath on the barrel.

30 Moreover, another advantage of the present invention is to provide a marking device, a method of using the same and an accessory kit for a marking device that may be used in public areas and may decrease the potential of contact with and/or the spread of bacteria, viruses and/or other microbes.

Additional features and advantages of the present

invention are described in, and will be apparent from, the detailed description of the presently preferred embodiments and from the drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

5 Figure 1 illustrates a perspective view of a sheath for a barrel of a marking device in an embodiment of the present invention.

10 Figure 2 illustrates a perspective view of a sheath having clamps and an end cap with a chain in an embodiment of the present invention.

15 Figure 3 illustrates a perspective view of a sheath wrapped around the barrel of a marking device and an end cap with a chain in another embodiment of the present invention.

20 Figure 4 illustrates a perspective view of a sheath, an adhesive and a protective layer in an embodiment of the present invention.

DETAILED DESCRIPTION OF THE PRESENTLY

PREFERRED EMBODIMENTS

25 The present invention generally relates to a marking device, a method of using the same and an accessory kit for a marking device. More specifically, the present invention relates to a marking device that includes a sheath that fits over a marking device, such as, for example, a pen, and an end cap on an end of the marking device having a connecting lead. Still further, the present invention relates to a sheath having an antimicrobial substance associated therewith.

30 Referring now to the drawings wherein like numerals refer to like parts, Figure 1 generally illustrates a sheath 10 that may fit over a barrel of a marking device. Generally, the sheath 10 may have a first end 12, a second end 14 and an aperture 16 for a barrel of a

marking device to fit therethrough.

5 The sheath 10 may further have a surface 18 having an antimicrobial agent associated therewith. The antimicrobial agent may produce an actively sterile surface that kills bacteria, viruses and other like microbes and disease-causing agents. One known material that may be implemented as a coating to the sheath 10 of the present invention is Spir-Agent™ manufactured by Spire, Inc. The material may be incorporated via deposition technology, namely ion-beam assisted deposition (IBAD) to create an infection-resistant actively sterile coating. Of course, other means may be implemented to apply the antimicrobial agent to the surface 18 of the sheath 10. Further, the antimicrobial agent may be contained within the material used to construct the sheath 10 and not necessarily contained merely upon the surface 18 of the sheath 10.

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Further, the sheath 10 may contain fingers along an entire length of the sheath 10 contained on an inside surface of the sheath 10. The fingers may allow the sheath 10 to grip the barrel of the marking device. Further, the fingers may provide spaces between the sheath 10 and the marking device to provide a cushion for a person as the person uses the sheath 10. Additionally, the sheath 10 may include a plurality of cells having air therein to provide a comfortable grip as the person uses the sheath 10. The antibacterial agent, the fingers on the inside surface of the sheath 10 and the plurality of cells are disclosed in U.S. Patent No. 6,019,533, the disclosure of which is incorporated herein by reference in its entirety.

The sheath 10 may fit snugly on a barrel of a marking device, such as, for example, a pen, a pencil or

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other like marking device, that may be apparent to those skilled in the art. Further, the sheath 10 may be removable from the marking device for replacement purposes or for depositing more of the antimicrobial agent to the sheath 10.

Figure 2 generally illustrates a marking device 50 having a barrel 52. The barrel 52 may have a first end 54 and a second end 56. The marking device 50 may be any device capable of producing a mark with a tip 58, such as a pen, a pencil or any other like marking device. The cross-sectional shape of the barrel 52 may be circular as shown in Figure 2. However, the barrel 52 may have any other cross-sectional shape that may be apparent to those skilled in the art. For example, the cross-sectional shape of the barrel 52 may be square, triangular-shaped, multi-sided or any other shape that may be apparent to those skilled in the art. Further, the sheath 10, as shown in Figure 1, may be designed to conform to any shape of the barrel 52.

20 Still referring to Figure 2, the barrel 52 may have a
a sheath 60 secured thereon. The sheath 60 may have a
split section 62 and further may have bands 64 that may
be utilized to fasten over the sheath 60 to fix the
sheath 60 to the barrel 52. The bands 64 may have screws
25 66 or other like fastening means that may be attached to
the band 60 and utilized to tighten the bands 64 over the
sheath 60. The bands 64 may have apertures for the screws
66 to fit therethrough. For example, as shown in Figure
30 2, the bands 64 may have ends that overlap thereby
allowing the apertures contained within the bands 64 to
overlap as well. The screws 66 may fit through the
apertures. Tightening of the screws 66 may tighten the
sheath 60 to the barrel 52. Any number of bands may be

utilized to fix the sheath 60 onto the barrel 52. Further, any connecting means may be utilized to tighten the bands 64 to the sheath 60 as may be apparent to those skilled in the art.

5 The sheath 60 may be a rectangular piece of material
when laid on a flat surface but may wrap around the
barrel 52 of the marking device 50 to be fixed in place
by the bands 64. When placed around the barrel 52, the
sheath 60 may form the split 62 between two ends of the
sheath 60. Alternatively, the two ends of the sheath 60
0 may overlap (not shown).

15 A tool 68 may be utilized to fasten the screws 66 onto the bands 64 thereby fixing the sheath 60 to the barrel 52. The tool 68 may be specially designed to aid in attaching the sheath 60 to the barrel 52 or may be any other tool that may aid in this process.

Further, the sheath 60 may contain the antimicrobial agent thereon to kill bacteria, viruses, fungi or any other like microbial substances or disease-causing substances as described in U.S. Patent No. 6,019,533, the disclosure of which is incorporated by reference herein in its entirety.

25 Fixed on the second end 56 of the barrel 52 may be
an end cap 70 having a connecting lead 72 extending
therefrom. The end cap 70 may fit over the second end 56
of the barrel 52. The end cap 70 may have an opening 73
that is slightly larger g13

30 than the width of the barrel 52. The end cap 70, therefore, may fit snugly over the second end 56 of the barrel 52 thereby fixing the end cap 70 to the marking device 50. Additionally, the end cap 70 may be constructed of a rubberized material having a degree of pliability that may allow the end cap 70 to fit over

other shaped barrels. For example, the end cap 70 may have a generally circular-shaped opening 73. However, the end cap 70 may be pliable and may fit over the end of a triangular-shaped barrel or other shape barrel that may be apparent to those skilled in the art.

10 Alternatively, the end cap 70 may have screw threads therein. The screw threads may engage with screw threads that may be contained on the second end 56 of the barrel 52 thereby causing the end cap to become fixed to the second end 56 of the barrel 52. However, any other attaching means may be utilized to attach the end cap 70 to the marking device 50, and the present invention should not be construed as limited in any way as herein described. Any attaching means may be utilized to connect the end cap 70 to the marking device 50 that may be apparent to those skilled in the art.

The connecting lead 72 may extend from the end cap 70 and may be integrally formed with the end cap 70. However, the connecting lead 72 may extend from a hole contained on an end of the pen cap 70 (not shown). The connecting lead 72 may be a chain, a rope, or any other like connecting apparatus that may be apparent to those skilled in the art. The connecting lead 72 may connect to any surface, such as, for example, a wall, an ATM machine, a desk or any other like surface.

In use, the marking device 50 may be fit with the sheath 60 that may be fixed to the barrel 52 via the bands 64 and the screws 66. The bands 64 and the screws 66 may be attached via the tool 68. The sheath 60 may thereby allow a comfortable grip to be placed onto the marking device 50 and further may provide a substance that kills disease-causing agents thereby allowing the marking device 50 to be used in public places without

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fear of contracting bacteria, viruses and/or disease. Further, the marking device 50 may be attached to the end cap 70 with the connecting lead 72 further attached to an immovable surface such as, for example, a computer or ATM machine or any other like area, that may require a marking device 50 to provide security to the marking device 50.

Referring now to Figure 3, the marking device 50 is further illustrated having the end cap 70, the connecting lead 72 and a sheath 100 that may be wrapped around the barrel 52 of the marking device 50. The sheath 100 may be generally rectangular-shaped when laid on a flat surface but may conform to the shape of the barrel 52 when wrapped therearound. Therefore, the sheath 100 may conform to any size and shape barrel 52 that may be apparent to those skilled in the art.

As shown in Figure 4, one side of the sheath 100 may contain an adhesive 104 that may be utilized to adhere the sheath 100 to the marking device 50. When the sheath 100 has been wrapped around the barrel 52 of the marking device 50, the adhesive 104 may render the sheath 100 relatively immovable. The sheath 100 may be unwrapped from the marking device 50 for purposes of replacement when worn or when the sheath 100 has otherwise lost its effectiveness. Alternatively, the adhesive 104 may permanently adhere the sheath 100 to the barrel 52.

30 Alternatively, the sheath 100 may be composed of a non-adhesive material that may allow the sheath 100 to stick to itself, the barrel 52 or any other like surface. When wrapped around the barrel 52 of the marking device 50, the sheath 100 may attach to the barrel 52 and to itself. The sheath 100 may also contain the antimicrobial agent thereon or otherwise associated therewith.

5 Before the sheath 100 has been wrapped around the marking device 50, a protective layer 102 may be provided on one side of the sheath 100 to protect the adhesive 104 that may be contained thereon as shown in Figure 4.

10 A user may then peel the protective layer 102 from the adhesive 104 on the sheath 100 and thereafter wrap the sheath 100 around the barrel 52 of the marking device 50.

15 It should be understood that various changes and modifications to the presently preferred embodiments described herein will be apparent to those skilled in the art. Such changes and modifications may be made without departing from the spirit and scope of the present invention and without diminishing its attendant advantages. It is, therefore, intended that such changes and modifications be covered by the appended claims.

I. Claim:

1. A marking device comprising:
 - a barrel;
 - a sheath that fits over the barrel; and
 - an end cap for fitting on an end of the barrel wherein the end cap has a connecting lead.
2. The marking device of Claim 1 wherein the sheath is cylindrically shaped with an aperture therethrough.
3. The marking device of Claim 1 wherein the sheath wraps around the barrel of the marking device.
4. The marking device of Claim 1 further comprising:
 - a clamp for clamping the sheath to the marking device.
5. The marking device of Claim 1 further comprising:
 - an antibacterial substance associated with the sheath.
6. The marking device of Claim 1 wherein the connecting lead is a chain.
7. The marking device of Claim 1 wherein the end cap is interchangeable between a plurality of barrels.
8. The marking device of Claim 1 further comprising:
 - means for attaching the sheath to the barrel.
9. A marking device accessory kit, the accessory kit comprising:
 - a marking device having a barrel; and
 - a flat article wherein the article wraps around the barrel of the marking device.
10. The accessory kit of Claim 9 further comprising:
 - a clamp for clamping the article to the marking device.
11. The accessory kit of Claim 9 further comprising:
 - an antimicrobial substance associated with the article.

12. The accessory kit of Claim 9 wherein the article wraps a plurality of times around the barrel creating a plurality of layers around the marking device.

13. The accessory kit of Claim 9 wherein the article includes an adhesive for fixing the article to the barrel of the marking device.

14. The accessory kit of Claim 10 further comprising:
a tool for attaching the clamps to the article.

15. A marking device accessory kit, the accessory kit comprising:
a marking device having an end; and
an end cap fitting on the end of the marking device wherein the end cap is interchangeable between a plurality of marking devices; and
a connecting lead connected to the end cap.

16. The accessory kit of Claim 14 wherein the connecting lead is a chain.

17. A method of using a marking device, the method comprising the steps of:
providing a barrel having an end;
providing a sheath that fits over the barrel;
providing an end cap for fitting over an end of the barrel wherein the end cap has a connecting lead;
fitting the sheath over the barrel; and
fitting the end cap over the end of the barrel.

18. The method of Claim 17 further comprising the step of:
providing an antimicrobial substance on the sheath.

19. The method of Claim 17 further comprising the steps of:
providing clamps for clamping the sheath to the barrel of the marking device;
wrapping the sheath over the barrel of the marking

device; and

clamping the sheath to the barrel of the marking device.

20. The method of Claim 17 further comprising the steps of:

providing an adhesive on the sheath; and

wrapping the sheath around the barrel of the marking device forming layers wherein the layers stick together and further to the marking device via the adhesive.

ABSTRACT OF THE DISCLOSURE

A marking device, a method of using the same and an accessory kit for a marking device are provided. The marking device may include a sheath that may fit over a barrel of a marking device such as, for example, a pen or a pencil. Further, the marking device may contain an end cap having a connecting lead that may be attached to a surface, such as a surface on or near a computer or an automatic teller machine, for example. In addition, the sheath may contain an antimicrobial agent that may protect users of the sheath from disease-causing bacteria or other like agents.

FIG.1

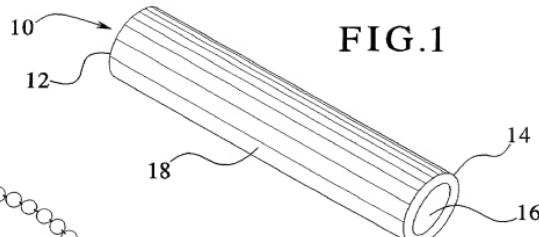


FIG.2

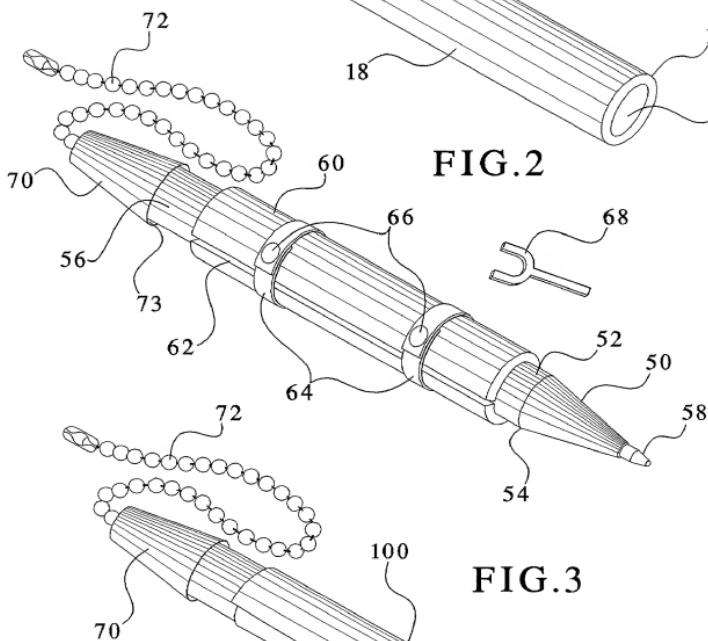


FIG.3

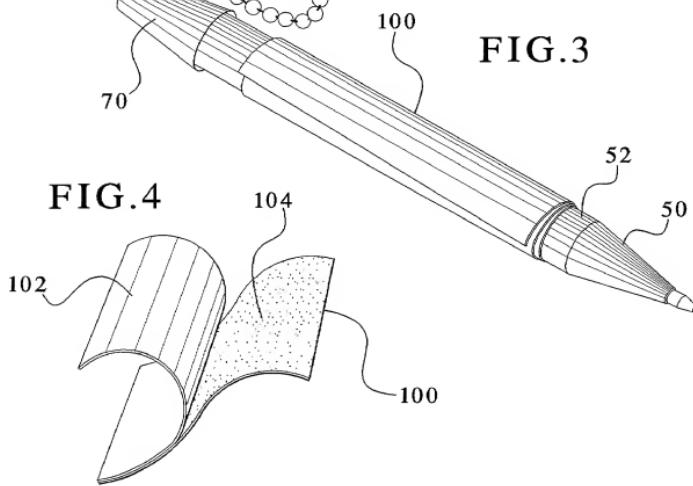
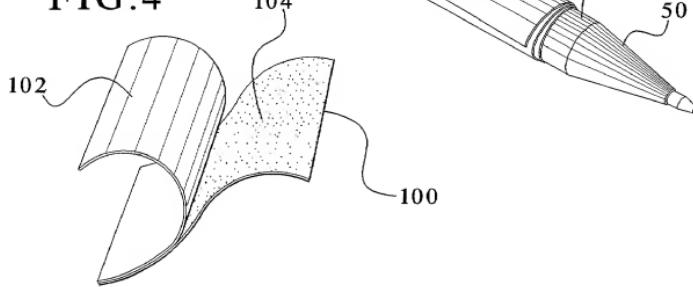


FIG.4



DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

"A MARKING DEVICE, A METHOD OF USING THE SAME AND AN ACCESSORY KIT FOR THE MARKING DEVICE"

Case No. EVS-P-99-017, the specification of which

X is attached hereto.
(check one) was filed on , as
Application Serial No. ,
and was amended on .

(if applicable)

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims as amended by any amendment referred to above.

I acknowledge the duty to disclose to the United States Patent Office all information which is known to me to be material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, 1.56(a)¹.

I do not know and do not believe this invention was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, and I believe that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns, except as identified below:

I hereby claim foreign priority benefits under Title 35, United States Code, 119 of any foreign application(s) for patent or inventor's certificate listed below:

Prior Foreign Application(s)

¹(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of unpatentability.

A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

Number

Country

Date

and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the above listed application on which priority is claimed:
Prior Foreign Application(s)

Number

Country

Date

If no priority is claimed, I have identified all foreign patent applications filed prior to this application:

Prior Foreign Application(s)

Number

Country

Date

And I hereby appoint Brian M. Mattson (Reg. No. 35,018) and Stephen T. Scherrer (Reg. No. 45,080) of the firm of Patents+TMS, A Professional Corporation as my attorneys with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith and direct that all correspondence be forwarded to:

Patents+TMS
A Professional Corporation
1914 N. Milwaukee Avenue
Third Floor
Chicago, IL 60647
Telephone: 773/772-6009

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor Paul A. Smith

Inventor's signature Paul A. Smith

Date 2-22-2000

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